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LEGAL UPDATE

DRAFT AMENDED LAW ON ENTERPRISES



The Ministry of Finance (“**MoF**”) has issued the draft Law (“**Draft Law**”) amending and supplementing a number of articles of the Law on Enterprises 2020 (“**LOE 2020**”), which is scheduled to be presented to the National Assembly for consideration and approval in May 2025.

The Draft Law aims to address shortcomings of the LOE 2020, create a favorable and safe investment and business environment for enterprises and promote digital transformation. This update will highlight some significant points of the Draft Law as below:

1. New Definition of Ultimate Beneficial Owner

The Draft Law introduces the concept of Ultimate Beneficial Owner (“**UBO**”) to enhance transparency in business ownership, meet the Financial Action Task Force (“**FATF**”) standards on anti-money laundering and address Vietnam’s placement on the FATF grey list.

Under the Draft Law, the UBO is defined as an individual who:

- i. directly or indirectly holds 25% or more of the charter capital of the enterprise;
- ii. directly or indirectly benefits from more than 25% of the enterprise’s dividends or profits; and
- iii. has the right to ultimately control the enterprise.

The control over the enterprises refers to the ability of an individual or organization or group of them to influence the operations of that enterprise through one or more of the following means:

- i. holding more than 50% of the charter capital or ordinary shares;
- ii. directly or indirectly appointing or dismissing

the majority of the board of directors or key executives;

- iii. amending the enterprise’s charter; and
- iv. deciding on significant business activities.

The enterprise has responsibilities to notify the registration authority about UBO at establishment or within 10 days of changes, retain UBO information for at least 5 years post-dissolution. The Draft Law also introduces additional obligations requiring the legal representatives and UBO to report relevant information, in alignment with international practices and recommendations of FATF.

Failure to properly declare UBO information, once enacted, is expected to result in administrative sanctions in line with international practices and future implementing regulations. Enterprises and their legal representatives may face fines or business restrictions if inaccurate information is provided.

2. Measures Against False Capital Declarations

In recent times, there has been an increasing number of enterprises engaging in the practice of declaring fictitious or inflated charter capital for the purpose of contributing capital or acquiring controlling interests in other enterprises, with the intention of committing legal violations or misappropriating assets. In response to this issue, the Draft Law introduces a clear definition of “false declaration of charter capital” to establish a legal basis for effectively identifying and handling such misconduct in practice. Specifically, the “false declaration of charter capital” is defined as the declaration of an amount of charter capital that exceeds the actual capital contributed at



the time when capital contribution is required to be completed in accordance with the law.

Foreign investors are advised to conduct thorough due diligence and adopt appropriate investment structuring measures to ensure the verification of fully-paid charter capital when investing in Vietnam.

Failure to declare charter capital truthfully may expose enterprises to administrative penalties, including fines and mandatory adjustment of registered capital.

3. Changes to Enterprise Registration

Pursuant to the directive set out in the Politburo's Conclusion No. 119-KL/TW dated 20 January 2025, the Draft Law now focuses on general principles, delegating procedural details to Government-issued decrees. This approach aims to ensure regulatory flexibility and align with the administrative authority of the Government.

As a consequence, detailed regulations concerning enterprise registration, such as the content of the enterprise registration certificate ("**ERC**"), the procedure and dossier requirements for amending ERC have been removed in the Draft Law and will instead be addressed in subsequent implementing regulations.

4. Other amendments regarding corporate management

The Draft Law introduces amendments and supplements to regulations on the capital contribution transfer and corporate governance mechanism within

a multi-member limited liability company. Notably, the Draft Law clarifies the ratio of capital contribution transfer when a member transfers their capital contribution to other members. It also supplements regulations on convening meetings of the Board of Members in special cases, such as absence of the chairman of the Board of Members or in cases where the chairman is incapacitated or has lost legal capacity.

With respect to joint stock company, the Draft Law addresses practical challenges associated with reducing charter capital. Under the LOE 2020, one of the conditions for a company to reduce its charter capital is that it must have conducted continuous business operations for at least two years from the date of initial business registration. In practice, this provision has created difficulties for companies that have operated for over two years but experienced temporary suspensions, leading to the interpretation that the continuity requirement has not been met. Furthermore, the LOE 2020 does not provide a basis for charter capital reduction in cases where an enterprise is required to refund contributed capital at the request of the owner of redeemable preferred shares. The Draft Law has been amended to resolve both of these issues.

In conclusion, the Draft Law aims to address regulatory inconsistencies and fill existing legal gaps, while aligning Vietnam's enterprise legal framework with international standards. These proposed amendments are expected to improve legal clarity, enhance corporate transparency, and strengthen Vietnam's position as an attractive destination for domestic and international investors.

Contact Information

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